

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1425 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

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DILAWARKHAN @ DILU ISMAILBHAI PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1425 of 2001
MR MM TIRMIZI for Petitioner No. 1
MS. BINODA GAJJAR AGP for Respondent No. 1-3
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CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 28/08/2001

ORAL JUDGEMENT

1. In exercise of the powers conferred under Section 3 (2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ('the Act' for short), Commissioner of Police, Ahmedabad City, Ahmedabad, vide order dated January 20, 2001, Annexure A to the petition, detained the petitioner

- detenu.

2. The averments made in the petition and the grounds of detention makes it clear that the detaining authority considered the petitioner's activities as detrimental to the maintenance of public order and in view of the involvement of the petitioner in two offences registered under the Prevention of Cruelty to Animals Act, 1960, with a view to curb his antisocial activities, the petitioner is detained.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the order of detention on various grounds and prayed to issue an appropriate writ, order or direction quashing and setting aside the impugned order of detention and also prayed to set him at liberty forthwith.

4. Though the petitioner has challenged the impugned order of detention on various grounds, Mr. Tirmizi, learned advocate for the petitioner, has restricted his arguments to the point that the subjective satisfaction recorded by the detaining authority under Section 9 (2) of the Act cannot be considered as genuine. To bring home the aforesaid submission, reliance is placed on the statements of two witnesses which were recorded on January 16, 2001 and January 17, 2001 and came to be verified on January 19, 2001 and immediately on the next day, that is, January 20, 2001, the detaining authority has passed the impugned order of detention and, therefore, it can be said that the detaining authority has exercised powers under Section 9 (2) of the Act improperly and he had no sufficient time to examine the statements of the witnesses.

5. Ms. Binoda Gajjar, learned AGP has not opposed the factual aspects of the matter as averred in the petition and contended by the learned advocate for the petitioner. She, therefore, urged that appropriate orders may be passed in light of the principles enunciated by this Court in this regard.

6. There is no manner of doubt that the detaining authority has taken into consideration the statements of two witnesses which came to be recorded on January 16, 2001 and January 17, 2001. The said statements were verified on January 19, 2001 and the impugned order of detention came to be passed on January 20, 2001, that is, after one day of the verification of the statements of the witnesses.

7. Similar question arose before Division Bench of this Court in the case of Kalidas Chandubhai Kahar v. State of Gujarat 1993 (2) GLR 1659 where the statements of the witnesses were recorded on 16.10.1992 and order of detention was passed on 17.10.1992 and the Division Bench of this Court has observed that the power under section 9 (2) of the Act was improperly exercised and was held to be detrimental to the right of the detenu to make an effective representation contemplated under Article 22 (5) of the Constitution and, therefore, the detention order was quashed. Applying the principles laid down by the Division Bench of this Court in the case of Kalidas (supra) to the facts of the present case, it is clear that the present case is identical to the case referred to above. In the present case also, at the cost of repetition, be it stated that statements of two witnesses were recorded on 16.1.2001 and 17.1.2001 and they were verified on 19.1.2001 and immediately on the next day i.e., 20.1.2001 the order of detention was passed. Therefore, the order of detention stands vitiated and the petition deserves to be allowed on this ground alone.

8. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention dated 20.1.2001 passed against the petitioner detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

28.8.2001. (A. M. Kapadia, J.)

(karan)